

REMARKS

The foregoing remarks are responsive to the Office Action of July 17, 2009. Favorable reconsideration and allowance of the present application is respectfully requested in view of the foregoing amendments and these remarks.

Claims 1-16 and 55-57 are pending. Claims 17-54 and 58-63 have been withdrawn.

Claims 1, 2 and 7-13 are rejected under 35 U.S.C. § 102(e) as being unpatentable over US Patent No. 6,456,981 to Dejaeger. Claims 3-6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dejaeger in view of the Examiner's Official Notice. Claims 14-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the Dejaeger in view of U.S. Patent No. 7,330,828 to Schoder. Claims 55-57 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dejaeger in view of U.S. Patent Application Publication No. 2002/0082925 to Herwig.

The Examiner's Rejection Under 35 U.S.C. 102(b) Must Be Withdrawn Since Dejaeger Fails to Disclose All Claim Limitations

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913 (Fed. Cir. 1989). Furthermore, the elements must be arranged as required by the claim.

Claim 1 requires, with emphasis added:

A computer implemented method of providing to a customer customized media at a physical point of sale (PPOS) at a time of a sales transaction for a good/service, comprising the steps of:

storing a plurality of customer media profiles in a computer database, each of the customer media profiles comprising a customer identifier and a media content type identifier associated with the customer identifier, the media content type identifier identifying a type of information;

receiving a customer identifier from a customer at a point of sale computer located proximate to the PPOS, the point-of-sale computer being in electronic communication with the database;

retrieving from the database a media profile that is associated with the customer identifier received from the customer by the point-of-sale computer;

generating an item of current information, the content of the generated item of current information being determined by the time of the sales transaction for the good/service and the type of information identified in the retrieved media profile; and

communicating the generated item of current information to the customer at the PPOS proximate to the time of the sales transaction.

Dejaeger could not teach, nor could it suggest, the computer implemented method of claim 1 that includes “an item of current information” that is “determined by the time of the sales transaction.” The asserted text of Dejaeger, i.e., the “advertising message,” is based on a product that is not purchased by the user, and the users’ profile. Dejaeger, thus, describes generating an “advertising message” that is independent of the actual time any product is purchased. In other words, the advertising message would be the same if that same user repeats the process of purchasing a first product, and scanning, but not purchasing a second product. See Dejaeger’s Abstract. Therefore, Dejaeger’s advertising message could not be an item of current, time sensitive information that is based on when the sales transaction took place.

Because Dejaeger does not teach a current item of information that is “determined by the time of the sales transaction,” it follows that Dejaeger could not teach “communicating the generated item of current information.” The Examiner, however, asserts that “Figure 4” of Dejaeger teaches this limitation. Figure 4 of Dejaeger merely shows a printed receipt that includes a coupon, or an incentive voucher, to purchase an item at a subsequent visit to a store. Dejaeger Col. 10, lines 46-53. This voucher does not communicate “the generated item of current information” as described above. Rather, because the voucher is based on the users profile and shopping habits at that retailer, this communication would be the same regardless of the time the transaction takes places. Thus, the voucher either is pre-existing information that is presented based on the profile, or, is simply not a communication of time sensitive information, such as current events, news items, stock prices, etc. See the Specification at Page 8, lines 9-14; page 11, lines 31 -32; page 12, lines 10-12 of the specification. Therefore, “Figure 4” and the “advertising message” of Dejaeger does not set forth the detail included in, or the arrangement of, the limitations required in claim 1. Accordingly, because Dejaeger does not teach the limitations of the claim 1, the rejection of this claim under 35 U.S.C. 102(b) should be withdrawn.

In view of the foregoing, it is respectfully submitted that independent claim 1 of the present application is allowable, even though the foregoing may not present all of the reasons for allowability. The dependent claims are allowable because of their respective dependence from an allowable independent claim, and because the dependent claims are further patentably distinguishable.

It is respectfully submitted that the present application is in condition for immediate allowance, and such action is solicited. If for some reason the Examiner deems that the present

application is not in condition for immediate allowance, it is respectfully requested that the Examiner telephone the undersigned at 336-721-3730, in an effort to expedite prosecution.

The Commissioner is hereby authorized to charge any additional fees that may be required for the timely consideration of this Amendment under 37 C.F.R. §§ 1.16 and 1.17, or credit any overpayment, to Deposit Account No. 09-0528.

Respectfully submitted

19 Oct 2007
Date

Jeffrey R. McFadden
Jeffrey R. McFadden
Registration No. 46,916

CUSTOMER NUMBER 26158
WOMBLE CARLYLE SANDRIDGE & RICE
P. O. Box 7037
Atlanta, Georgia 30357-0037
336-721-3730 (Telephone)
336-726-8061 (Facsimile)